

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: DORE, David James

SERIAL NO.: 10/580,705

ART UNIT: 3752

FILED: March 6, 2007

EXAMINER: Cernoch, S. M.

TITLE: MIST-SPRAYING APPARATUS

Amendment B: REMARKS

Upon entry of the present amendments, Claims 15 - 27 remain in this case. Claims 1-14 were canceled in the previous amendment. Claim 15 is amended. Reconsideration of the rejections, in light of the present remarks, is respectfully requested. The present amendments have been entered for correcting a minor informality that has been found in the original independent claim.

In the Office Action, Claims 15 - 19 and 25 were rejected under 35 U.S.C. § 102(b) as anticipated Gettinger patent. Claims 20 and 23 were rejected under 35 U.S.C. § 103(a) as being obvious over Gettinger patent. Claim 21 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Gettinger patent in view of the Herr patent. Claim 22 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Gettinger patent in view of the Fuchs patent. Claim 24 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Gettinger patent in view of the Fuchs patent.

Applicant notes that in the First Official Action, it was stated on page 4, first paragraph:

Gettinger et al. does not teach the atomizing nozzle being located within an outlet conduit so that atomizing particles emitted by the atomizing nozzle are entrained in an air stream emitted by said air-blowing means and thereby distributed evenly throughout the space.

It was further stated that the Moy patent did teach this structure. It was previously argued in the

Amendment “A” that the Applicant did not disagree with this statement. However, the Applicant contended that neither the Gettinger patent, the Moy patent, or a combination of both, provided the control means for controlling operation of the air-blowing means and the spraying means such that the operation of the air-blowing means is commenced prior to operation of the atomizing nozzle and continued after operation of the nozzle has ceased in order to continue circulation of the air and any atomized particles entrained therein around the space for a predetermined period of time.

In the present Official Action , it is now stated that “Gettinger patent shows atomizing nozzle (Fig. 1, 42) positioned centrally within said outlet conduit (36).” This appears to be completely contrary to the previous analysis. Applicant contends that this may arise from a misunderstanding of the term “atomizing nozzle”. Fundamentally, the Gettinger patent describes a hand-held spraying apparatus that comprises only an air atomized spray nozzle. In such a nozzle, a jet of air is used to break up a liquid to form a spray. The pressure of the air provides the energy required. For this reason, the jet of air is supplied via the passageway 44 into a chamber 40 in which is retained an unpressurized quantity of liquid available for spraying. The jet of air issues through the nozzle 50 into the chamber 40 where it acts to break up the liquid and to force same out of the exit orifice 42 in the form of an atomized jet. The exit orifice 42 is therefore the atomizing nozzle. This arrangement is fundamentally different from the arrangement of the present invention wherein the air provided by the air blowing means 1 is not used to atomize the liquid but only to enhance its distribution. Independent Claim 15 cannot, therefore, be anticipated by or obvious in view of the Gettinger patent because the atomizing nozzle (i.e. the cap 36 having the atomizing orifice 42) does not operate independently of the air blowing means and operation of the atomizing nozzle continues until operation of the air blowing means ceases because the air flow issues through the atomizing

orifice 42.

It was indicated in lines 48 - 64 of column 2 of Gettinger patent that:

In accordance with the present invention, a hand-held spraying apparatus for spraying a liquid is provided which includes a nozzle and a hand actuatable apparatus. The nozzle comprises a chamber for retaining a substantially unpressurized quantity of liquid available for spraying, an outlet, and a passageway for forcing a gaseous fluid through the quantity of liquid and out through the outlet. The hand actuatable apparatus acts to provide liquid to the chamber and through the outlet to produce a spray from the liquid. Preferably, the actuatable apparatus comprises a means for providing gaseous fluid to the chamber prior to liquid entering the chamber, during spraying of the liquid and after the liquid has stopped entering the chamber. Thus, air flow begins just prior to delivery of liquid, continues during the delivery and ends just after to prevent dripping, to ensure consistency of spray, and to clean the nozzle following discharge, thus preventing clogging.

As such, it can be seen that the air flow blows air through the chamber and will continue to atomize liquid therein after cessation of the supply of liquid to the chamber 40 “to prevent dripping, to ensure consistency of spray and to clean the nozzle”. All three of these reasons for the continuation of the air flow imply that the cap 36 continues an atomizing discharge during the short period that the air flow continues after cessation of delivery of the liquid to the chamber 40.

As can be appreciated, in the Gettinger patent, the air-blowing means is also the spraying means and is not capable of independent operation. As such, the element of the “controlling means for controlling said air-blowing means and said spraying means . . . for commencing operation of said air blowing means prior to operation of said atomizing nozzle and for continuing operation of said air-blowing means after operation of said atomizing nozzle has ceased” is not possible within the teachings of the Gettinger patent. This is because the Gettinger patent simply describes an atomizing nozzle. As such, independent Claim 15 cannot be anticipated by the Gettinger patent.

Applicant notes that the equivalent European application to this U.S. application has just been granted by the European Patent Office. A copy of the specification of the European application is attached hereto. This document is not submitted as a prior art document for an information disclosure document because the document does not qualify as a prior art reference against the present invention. Applicant acknowledges that the U.S. Examiner is not compelled to allow a U.S. patent based on a European standard. This document is presented to allow access to further persuasive arguments used in the patent examination in Europe. Those arguments are helpful to consider the distinctions, definitions and terminology as consistent through the Applicant's expression of the invention. Furthermore, the main prior art cited was the Gettinger patent again. It should be noted that the grant was achieved because of the above-stated argument. As can be seen, the independent claim of the granted European Patent is of similar scope to that presented by independent Claim 15 herein. The Gettinger patent is referred to in paragraph [0002] of the European patent.

Applicant notes that during a review of the previous Amendment "A", Applicant found a minor typographical error. In particular, the "spray means" should actually be recited as "spraying means". This creates the proper antecedent basis for the subsequent references to the "spraying means".

Based upon the foregoing analysis, Applicant contends that independent Claim 15 is now in proper condition for allowance. Additionally, those claims which are dependent upon independent Claim 15 should also be in condition for allowance. Reconsideration of the rejections and allowance of the claims at an early date is earnestly solicited. Since no new claims have been added above those originally paid for, no additional fee is required.

Respectfully submitted,

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